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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/443,070	11/18/1999	TERRY L. GILTON	3530.2US	6721

7590 08/08/2002

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EXAMINER

GABEL, GAILENE

ART UNIT

PAPER NUMBER

1641

DATE MAILED: 08/08/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No.	Applicant(s)
	09/443,070	GILTON, TERRY L.
Examiner	Art Unit	
Gailene R. Gabel	1641	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 July 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a)  The period for reply expires 3 months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: (see attached).
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.

Claim(s) objected to: NONE.

Claim(s) rejected: 1,2,8 and 12-31.

Claim(s) withdrawn from consideration: NONE.

8.  The proposed drawing correction filed on \_\_\_\_\_ is a) approved or b) disapproved by the Examiner.

9.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.

10.  Other: \_\_\_\_\_.

***Applicant's Response***

1. Applicant's response filed 7/22/02 in Paper No. 20 is acknowledged and has been entered. Currently, claims 1-2, 8, and 12-31 are pending and are under examination.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 8, and 12-31 stand rejected under 35 U.S.C. 102(b) as being anticipated by Swedberg et al. (US 5,571,410) for reason of record.

***Response to Arguments***

3. Applicant's arguments filed 3/5/02 with regards to the rejection of the claims as being anticipated by Swedberg, have been fully considered but they are not persuasive.

A) Applicant argues that Swedberg does not anticipate the claimed invention because Swedberg lacks any express or inherent description of "a porous capillary column comprising a matrix including the same material as the nonporous substrate". Specifically, Applicant argues that the Office has not established nor provided a rationale why Swedberg expressly or inherently teaches the claimed invention.

Contrary to Applicant's argument, Swedberg, indeed, expressly anticipates the teaching of the claimed invention. Specifically, Swedberg's teachings read on the claims as currently recited.

Applicant's claims 1 and 18 recite that "the capillary column is formed in a nonporous substrate" and "the porous capillary column comprises a matrix including the same material as the nonporous substrate and at least one capture substrate disposed on the matrix". Applicant's claims 1 and 18 additionally do not exclude that the nonporous substrate is not silicon or silicon dioxide material.

Swedberg teaches at column 11, lines 4-62 and column 15, lines 43-55, that miniaturized columns are formed [by laser ablating] into a substantially planar nonporous substrate comprising polymers, ceramics, and polyamides such as nylons, polyimides, polyolefin compounds, and polymethylmethacrylate. Swedberg further teaches that the porous matrix of the capillary column is formed in and from the same material as the nonporous substrate in column 21, line 49 to column 22, line 4; that the nonporous substrate comprising polyamides such as nylons, polyimides, polyolefin compounds, and polymethylmethacrylate, may have porosity formed thereto by incorporating a porous material comprising particles or membranes made from polyamides such as nylon, or polymethylmethacrylate; thus, forming a biocompatible porous matrix having the same material as the nonporous substrate in column 7, lines 33-43. Additionally, the matrix performs both a filtration function and a capture wherein a capture substrate includes antigens (biological affiant), antibody, lectin, enzyme

substrate, capture oligonucleotide, etc. (see column 27, lines 44-61). Therefore, it has been maintained that claims 1, 2, 8, and 12-31 are anticipated by Swedberg et al.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gailene R. Gabel whose telephone number is (703) 305-0807. The examiner can normally be reached on Monday to Thursday from 7:00 AM to 4:30 PM. The examiner can also be reached on alternate Fridays from 7:00 AM to 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le, can be reached on (703) 305-3399. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Gailene R. Gabel  
August 2, 2002

86

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